

REMARKS / ARGUMENTS

The present application includes pending claims 1-28. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 6,032,194 ("Gai"), in view of USPP 2002/0085495 ("Jeffries"), and USP 6,005,884 ("Cook"). The Applicant respectfully traverses these rejections based on the following remarks.

I. RESPONSE TO EXAMINER'S ARGUMENTS

The Examiner relies on Gai's Fig. 1, and equates Gai's access switch 114 and designated port 118 of network switch 114 to Applicant's "network switch" and "available switch port", respectively. The Examiner combines Gai with Jeffries' selecting a network node based on largest available bandwidth to equate to Applicant's "determining, based on bandwidth-related information, one available switch port on a network switch".

The Examiner concedes that Gai's switch port 118 of the access switch 114 (the alleged "network switch") is connected to a LAN 102, and not to an access point. The Examiner relies on Cook's Fig. 1 to disclose a base station 10 (the alleged "first access point group") connected to a LAN 36. The Examiner alleges that the combination of Gai, Jeffries and Cook reads on Applicant's "determining, based on bandwidth-related information, at least one available switch port on a

network switch, for handling a first access point group," (see 6/8/09 Office Action in page 2).

The Applicant, in page 21 of the 3/3/09 response, also argued that Cook does not overcome Gai's deficiencies, namely "the first access point group is communicatively coupled to a first **default switch port** of said network switch," as recited in Applicant's claim 1. The Examiner states the following:

"...Gai teaches that at least one available switch port on a network switch (Fig.1 :114 and Col.7:lines 53-55. switch) for handling a LAN (Col.4:lines 10-15), **said LAN is communicatively coupled to a first default switch port of said network switch** (Col.11 :lines 8-15 and Col.5:lines 20-24 and Fig.1: 102. 103. 104. LANs are connected to ports) and Cook teaches ..."

See the 6/8/09 Office Action in pages 2-3 (emphasis added). The Examiner equates Gai's root port to Applicant's "default switch port". Specifically, the Examiner relies on the following citation of Gai:

"Significantly, **for each access switch 114-116, only one port** (local or trunk) **that represents a path from the access switch to the root** (i.e., provides connectivity to the root through links, shared media, switches, etc.) will be forwarding. All other ports (local or trunk) that represent paths from the access switch to the root will be blocked. In other words, **only one port at each access switch 114-116 that provides connectivity to the root will be forwarding.**"

See Gai at col. 11, lines 8-15 (emphasis added). Gai discloses that the "only one port" is for providing **connectivity to the root**, i.e., to another shared media or **switch** (see Gai at col. 11, lines 8-15). In other words, Gai's "root port" 119 is connected only to one of the root switches 122-125. Gai's "root port" 119 is, therefore, not connected to the LAN 102 or LAN 103. Subsequently, Gai's "root

port" 119 is not connected to Cook's base station 10 (the alleged "access point group"). In this regard, the Applicant maintains that the combination of Gai and Cook does not disclose or suggest **"first default switch port"**, let alone disclose or suggest **"the first access point group is communicatively coupled to a first default switch port of said network switch,"** as recited in Applicant's claim 1. Cook and Jeffries do not overcome the above deficiencies of Gai.

Furthermore, the Examiner states the following arguments:

"Applicant argues that Gai does not teach said first default port is different from said at least one available switch port.

The examiner respectfully disagrees. **Gai teaches said LAN is communicatively coupled to a first default switch port of said network switch** (Col.11:lines 8-15 and Col.5:lines 20-24 and Fig.1:102, 103, 104. LANs are connected to ports); wherein said first default switch port (Col.2:lines 53-56) is different from said at least one available switch port (Col.4: lines 1-10, default port is different from new root port. i.e. available switch port)."

See the 6/8/09 Office Action in page 3 (emphasis added). The Examiner's above argument is now moot, in view of Applicant's above argument, namely the combination of Gai and Cook does not disclose or suggest **"the first access point group is communicatively coupled to a first default switch port of said network switch,"** as recited in Applicant's claim 1.

Accordingly, the Applicant further submits that the combination of Gai, Jeffries and Cook also does not disclose or suggest "provisioning said at least one available switch port of said network switch to provide service to said first access point group; and **communicating information using at least one of said first**

default switch port and said at least one provisioned switch port of said network switch," as recited in claim 1 by the Applicant. Cook and Jeffries do not overcome the above deficiencies of Gai.

Based on the above rationale, the Applicant maintains that the combination of Gai, Jeffries and Cook also does not establish a *prima facie* case of obviousness to reject Applicant's claim 1.

REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v.*

Teleflex Inc., 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

II. The Proposed Combination of Gai, Jeffries, and Cook Does Not Render Claims 1-28 Unpatentable

The Applicant now turns to the rejection of claims 1-28 as being unpatentable over Gai in view of Jeffries and Cook.

A. Independent Claims 1, 9 and 17

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Gai, Jeffries and Cook does not disclose or suggest at least the limitation of **"the first access point group is communicatively coupled to a first default switch port of said network switch"**, as recited in Applicant's claim 1.

The Examiner states the following:

"Regarding Claims 1, 9, and 17, Gai teaches determining ... at least one available switch port having a capability to handle a LAN (Col.4:lines 10-15), said **first access point group having a first default switch port** (Col.11:lines 8-15 and Col 5:lines 20-24 the

original active port initially selected based on least cost is the default port);”

See the Office Action at pages 3-4. The Examiner alleges that Gai’s **“only one port”** or the **“root port”** 119, is the alleged **“first default switch port”**. The Applicant respectfully disagrees and refers the Examiner to Applicant’s argument in the Response to Argument section, namely, Gai’s root port 119, is connected only to one of the root switches 122-125. In this regard, Gai at least does not disclose or suggest the claimed **“first access point group is communicatively coupled to a first default switch port of said network switch,”** as recited in claim 1 by the Applicant.

Accordingly, with the absence of disclosure of the claimed **“first default switch port”** by Gai, Gai subsequently also does not disclose or suggest **“said first default switch port is different from said at least one available switch port”**, as recited in claim 1 by the Applicant. Cook and Jeffries do not overcome the above deficiencies of Gai.

Accordingly, based on the above rationale, the combination of Gai, Jeffries and Cook subsequently also does not disclose or suggest **“provisioning said at least one available switch port of said network switch to provide service to said first access point group; and communicating information using at least one of said first default switch port and said at least one provisioned switch port of said network switch,”** as recited in claim 1 by the Applicant.

Therefore, the Applicant maintains that the combination of Gai, Jeffries and

Cook does not establish a prima facie case of obviousness to reject the Applicant's independent claim 1 and should be allowable. The Applicant respectfully requests that the rejection of independent claim 1 under 35 U.S.C. § 103(a) be withdrawn. Independent claims 9 and 17 are similar in many respects to independent claim 1. Therefore, the Applicant respectfully submits that claims 9 and 17 are also allowable at least for the reason stated above with regard to claim 1.

B. Dependent Claims 2-8, 26, 10-16, 27 and 18-25, 28

Dependent claims 2-8, 26, 10-16, 27 and 18-25, 28 depend directly or indirectly, from independent claims 1, 9 and 17, respectively. Consequently, claims 2-8, 26, 10-16, 27 and 18-25, 28 are submitted to be allowable at least for the reasons stated above with regard to claim 1. The Applicant respectfully requests that the rejection of claims 2-8, 26, 10-16, 27 and 18-25, 28 under 35 U.S.C. § 103(a) be withdrawn.

Regarding the rejection of claims 5, 13 and 21, the Examiner is referred to the above argument in claim 1. Namely, the combination of Gai, Jeffries and Cook does not disclose or suggest that the respective "default switch port of said network switch". Therefore, the Applicant maintains that claims 5, 13 and 21 are submitted to be allowable.

Likewise, claims 6-7, 14-15 and 22-23 are also allowable based on their

dependency on claims 5, 13 and 21 respectively.

Regarding the rejection of claims 25-28, the Applicant has reviewed the citations in Gai (col. 10, lines 1-12, col. 11, lines 8-24 and 41-51, col. 12, lines 19-27) and submits that Gai at least does not disclose the claimed “a bandwidth management controller, a quality of service controller, a load balancing controller, a session controller”. Therefore, the Applicant maintains that claims 25-28 are submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-28.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-28 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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/ Frankie W. Wong/

Frankie W. Wong
Registration No. 61,832
Patent Agent for Applicant

McANDREWS, HELD & MALLOY, LTD.
500 WEST MADISON STREET, 34TH FLOOR
CHICAGO, ILLINOIS 60661
(312) 775-8093 (FWW)